

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7578 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GIRIRAJ TRADELINK PVT. LTD

Versus

STATE OF GUJARAT

Appearance:

MR HARESH H PATEL for Petitioner
MR TH SOMPURA, AGP for Respondent No. 1, 2, 3 & 5
M/S THAKKAR ASSOC. for Respondent No. 4

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 11/02/97

ORAL JUDGEMENT

Rule. Learned Govt. Counsel Mr.T.H.Sompura for the respondents nos.1, 2 and 3 and learned Counsel Mr.Prakash Thakkar for respondent no.4 waive the service of Rule respectively.

The petitioner before me, happens to be Giriraj Tradelink Pvt. Ltd., a Private Limited Company, having the registered office at Rajkot. The respondents nos.1, 2 and 3 happen to be the State, the Collector of the District and the Mamlatdar of the concerned Taluka. The respondent no.4 happens to be the Rajkot District Co-operative Bank Ltd., at Rajkot. The respondent no.5 happens to be the District Supply Officer, Rajkot.

Upon hearing learned Counsel Mr.Haresh Patel for the petitioner and the aforesaid learned Counsels, the present petition requires to be disposed of, in the manner indicated hereinafter.

One Kotda Sanghani Taluka Sahkari Kharid Vechan Sangh Ltd., was a Co-operative Society, registered under the Gujarat Co-operative Societies Act. This Institution may be referred to, for the sake of brevity, as the "Kotda Sangh". Kotda Sangh was granted certain lands which were originally granted to one another Institution known as "Gram Swaraj Mandal". The lands were granted to the Kotda Sangh for the purposes of establishment and development of an oil mill with connected facilities. Kotda Sangh had made the necessary constructions and had installed the necessary machinery for the purpose of running an oil mill. The respondent no.4-the Bank had filed the suit before the Board of Nominees, Rajkot, against the Kotda Sangh for their dues. The awards were passed and the execution proceedings were taken out before the learned Civil Judge, (SD), Gondal. It appears that the proclamation of sale were also issued, but, ultimately, there was an application at Exh.13 given by the respondent no.4-the Bank, saying that they should be permitted to sale the assets belonging to the Kotda Sangh under the private negotiations. By a brief and cryptic order, the learned Civil Judge (SD), Gondal, dated December 2, 1995, has granted the above said application and the Darkhast proceedings came to be disposed of. It appears that, later on, the petitioner under the private negotiations, has purchased the entire assets of the Kotda Sangh and the amount in question has been paid to the respondent no.4-Bank. There is an incidental development under which the present petitioner had taken the loan or advances from the very same Bank, i.e. the respondent no.4. Certain post-dated cheques have been given by the petitioner to the said Bank. Some of the cheques have been realised and some of them are yet to be presented on the appropriate date. It shall have to be appreciated that, at the time of the orders of the issuance of the notice on October 18, 1996, it has been said that the cheques shall not be realised till the

returnable date. These orders have been extended from time to time.

Reverting back to the main process, it appears that when the present petitioner had purchased the properties under the private negotiations from the Kotda Sangh, the Mutation Entry No.2113 came to be posted in the revenue record on February 19, 1996. This entry could not be certified and was kept in abeyance under the orders dated June 1, 1996. Later on, it appears that there was some communication from the Collector, Rajkot, addressed to the Mamlatdar concerned saying that, as the Government is claiming unearned profit from the Kotda Sangh, the above said entry should not be certified and should be cancelled. This communication coming from the Collector, Rajkot, has, obviously, been accepted by the concerned Mamlatdar and, ultimately, this entry has been cancelled under the orders dated July 24, 1996. There has been a subsequent communication dated August 10, 1996, available at Annexure.F, addressed to the Kotda Sangh and the petitioner, saying that the said entry has been cancelled from the revenue record.

The present proceedings are posing a challenge to the above said orders under which the entry came to be cancelled. It is also the question to be examined as being raised by learned Counsel Mr.Prakash Thakkar for the respondent no.4-Bank, as to whether, when the petitioner had given certain cheques to the respondent no.4-Bank as the payment of the advance dues, there could be an order under which the Bank could be directed not to get the said cheques encashed.

Firstly, it appears that the orders of the Mamlatdar, cancelling the entry which was already posted in the record are in pursuance of the order of a superior officer, namely, the Collector. It appears that the Collector had already taken a view that the entry required to be cancelled. Therefore, there was a communication or order coming from the superior officer, going to the subordinate officer saying that the entry requires to be cancelled. It should not be overlooked that, if there was the cancellation or the non-certification of the entry in question, the appeal could have gone before the learned Prant Officer and later on, before the Collector. Therefore, this is a case in which the authority who could have been the ultimate appellate authority, has preferred to send written communication to the Mamlatdar saying that the entry requires to be cancelled. This is one aspect of the matter.

The second important aspect is that, an already posted entry in the revenue record came to be set at naught on the instructions of the higher officer without affording a reasonable opportunity of being heard to the petitioner. This appears to be a total disregard of the principles of natural justice.

Therefore, the only course open to this Court is to set aside the orders regarding the non-certification dated June 1, 1996 and the orders of the cancellation dated July 24, 1996 and to remand the matter to the Mamlatdar, who shall decide the matter as a disputed entry. While doing so, the Mamlatdar shall afford a reasonable opportunity of being heard to all the concerned and to adduce evidence, both oral and documentary, if they desire to do so.

Taking up the question regarding the orders granted by this Court at the time of issuance of the notice regarding the non-encashment of the cheques, I would say that the dispute is entirely different and there could not be now the above said orders under which the Bank could be obliged not to get the money of the cheques which have been given to them by the petitioner towards the dues against them in altogether a different transaction. The above said orders, therefore, shall have to be lifted or vacated. I order accordingly.

There was a concern being expressed by learned Govt. Counsel Mr. Sompura that, huge amounts by way of unearned profits have to be recovered either from the Kotda Sangh or from the petitioner, who happens to be the successor-in-title and that, therefore, the interest of the State for the recovery of the huge amounts of the unearned profit should be taken care of. Learned Counsel Mr. Haresh Patel makes it clear that they they have already taken the advances from the Bank. Any how, the status-quo as it is obtainable on today, shall have to be maintained by saying that, till the question regarding the posting of the entry is settled by Mamlatdar concerned, the petitioner shall not, in any way, transfer or alienate the properties in question or shall not subject them to any other or further charge.

The remanded proceedings shall have to be completed by the Mamlatdar within a period of two months from the date of receipt of the writ of the present orders. Learned Counsel Mr. Haresh Patel makes it clear that the petitioner shall co-operate in the proceedings in all respect. Rule is made absolute accordingly to the

above said extent only, with no order as to costs.
